no magistrate can safely convict solely on an admission of the breach of condition of the licence."

In this case as the prosecution had failed to satisfy the magistrate beyond reasonable doubt that there was no policy of insurance in force by not calling a representative of the insurance company as to whether or not they considered themselves on risk, the magistrate was in duty bound to give the benefit of the doubt to the respondent and find him not guilty.

The appeal is dismissed.

Appeal dismissed.

PAPOO v. VEERIAH

[O.C.J. (Good J.) March 13, 1959]

[Ipoh — Originating Summons No. 53 of 1958]

Land laws — T.O.L. — Dwelling house built on land subject to temporary occupation licence — Whether capable of assignment — Whether forms part of the estate of the licensee.

This was an application by the widow and administratrix of the estate of a deceased person to transfer to her own name as sole beneficiary of the estate of the deceased a house which was built upon land which was the subject of a temporary occupation licence. There was a purported sale of the house by a former administratrix of the estate to the respondent and the temporary occupation licence had been re-issued in the name of the respondent.

Held: (1) neither land the subject of a temporary occupation licence nor anything which is attached to the land can be transferred or pass on intestacy or be transmitted by the will of a testator;

(2) in this case the application must be dismissed as the applicant had no right to occupy the land or the house that stands upon it.

Case referred to:—

(1) *Hee Cheng* v. *Krishnan* [1955] M.L.J. 103.

ORIGINATING SUMMONS.

S. A. Lingam for the applicant.

F. C. Arulanandom for the respondent.

Good J. (delivering oral judgment): This is an application by the widow and administratrix of A. Vengadasalam Pillay, deceased, to transfer to her own name as sole beneficiary of the estate of the deceased a house in the Tamil Settlement at Guntong, Ipoh, which is built upon land that is the subject of the temporary occupation licence. This is yet another example of a state of affairs which is unfortunately all too common where there is a discrepancy between the person in whose name the temporary occupation licence is issued and the person claiming to be entitled to the ownership of a dwelling house upon the land which is the subject of that temporary occupation licence. I should have thought that by now the position would have been well understood. The learned Chief Justice of the Federation, as Mr. Justice Thomson in 1955, delivered a judgment in *Hee Cheng* v. *Krishnan* [1] which left the matter in no doubt whatever. The public, however, apparently continue to treat land held under temporary occupation licence as if such a licence was capable of transferring some kind of title to the holder and as if it conferred upon the holder a right to deal in land, or in things attached to the land, which comes to the same thing, as if it was land in the ownership of the licence holder. Even the administration appear to share the misapprehension of the public so far as buildings on the land are concerned because in this case there is a letter from the assistant district officer, Ipoh, to the former solicitor of the applicant in which he says that he has renewed the licence in the respondent's name for the year 1958, and that the court has not decided the ownership of the house under the temporary occupation licence in question but that the present temporary occupation licence may be cancelled and a fresh one issued in the name of anyone whom the court may decide to be the owner of the house. That, with the greatest respect to the writer of the letter, discloses a complete misconception of the true legal position as regards houses built on State land held under temporary occupation licence. A temporary occupation licence is exactly what the name implies. It is a licence to occupy and nothing more. As I said in a recent judgment in Civil Suit No. 326 of 1957: "It is perfectly clear that if the holder of a temporary occupation licence chooses to put up a building on the State land which he occupies by virtue of that licence, he takes the risk of losing what he has put into that building." If it had been necessary to the determination of that case I would have gone further; and I go further now and say that if people choose to deal in building erected on State land which is the subject of a temporary occupation licence, if they acquire such buildings for valuable consideration, they do so at their own risk because they know, or they ought to know and they must be deemed to know, that such buildings cannot be the subject of private transactions unless in the absence of any contract to the contrary to which the State Government may be a party, such buildings are clearly the property of the State.

In the present case, the deceased, Vengadasalam Pillay, was the holder of a temporary occupation licence over State land upon which the house in question was built. He left the house to his widow, the present applicant. In my opinion, and I have given careful consideration to Mr. Lingam's submission in this respect, the provisions of Land Rule 41, "No licence for the temporary occupation of State land shall be transferable" applies to transmission on the death of the licence holder to the same extent as it

applies to transfers *inter vivos* for the reason that the land which is the subject of the temporary occupation licence can never form part of the assets of the deceased; and neither can anything attached to the land which goes with the land form part of the assets of the deceased. It is not part of the estate at all; and it cannot pass on intestacy and it cannot be transmitted by the will of a testator. The licence is personal to the holder; it dies with the holder. If the collector of land revenue in exercise of the powers delegated to him by the Ruler-in-Council chooses to issue a fresh licence to a legatee or a next-of-kin that is a matter entirely in his discretion. Here, letters of administration with the will annexed were granted originally to one Thayanayagi, daughter of Singaravelu. That was in 1940. Subsequently in February, 1957, that grant was revoked and letters of administration with the will annexed were issued to the present applicant. In the meantime the original administratrix had purported to sell the house in question to the respondent for valuable consideration. That she had no power to do so is of course beside the point. The fact is that the temporary occupation licence which had been re-issued in her name after the death of the deceased, Vengadasalam Pillay, was then called in or surrendered and re-issued in the name of the purchaser, namely, the respondent in these proceedings. It is by virtue of the temporary occupation licence issued in his name that he is entitled to occupy the land and the house that stands upon the land. In my view there is no power in this court to alter that position nor do I think that the legal remedy which the applicant seeks is available to her at all. She may have some remedy in damages against Thayanayagi. It is not for me to express any opinion on that in these proceedings, but this court has no jurisdiction to transfer to her or to give her leave to transfer to herself a house which goes with land that is the property of the State. Her remedy is to go before the collector of land revenue with all the facts. If he chooses to hold some sort of enquiry into the facts, he is entitled to do so; and if he decides to hold an enquiry he will doubtless hear the representations which are put forward by or on behalf of both parties to these proceedings. If he then chooses to exercise his discretion in the matter of temporary occupation licence he is in a position to rectify the present position, if it needs rectification. But the whole matter is entirely one for his discretion. If he were to decide — or because he is only acting under delegated authority, — if the Ruler-in-Council were to decide and were to instruct the collector accordingly — that the temporary occupation licence was not to be renewed at the end of the current year, what then? Nobody has any claim in law to the issue of a temporary occupation licence. The land which is the property of the State would cease to be in the occupation of any private individual, and the house would be the property of the State. And in the absence of any contract by the State it would again be entirely a matter of discretion whether the State either allowed any compensation to any person for the house or permitted any person to demolish and remove the materials of the house. For these reasons the application must fail and I accordingly dismiss it with costs.

Application dismissed.

Solicitors: *S. A. Lingam*; *Braddell & Ramani.*

BAJU RIA v. LIAU KIM LIAN

[C.A. (Thomson C.J., Barakbah and Azmi JJ.) October 21, 1961]

[Kuala Trengganu — F.M. Civil Appeal No. 4 of 1961]

Moneylending — Definition of "moneylender" — Carrying on business of moneylending — Presumption — Rebuttal —Moneylenders Ordinance, 1951, ss. 2, 3 & 15.

The plaintiff brought an action against the defendant for the sum of $8,000 for money lent. The substantial defence was that the plaintiff was an unlicensed moneylender and that therefore by reason of section 15 of the Moneylenders Ordinance, 1951, no contract for the repayment of money lent by her was enforeable. The plaintiff had been carrying on the business of a rubber and rice dealer for a number of years but she admitted that she had lent money on three specific occasions otherwise than in the course of her business as a rubber and rice dealer. The trial judge gave judgment for the plaintiff and the defendant appealed.

Held: although under section 3 of the Moneylenders Ordinance, 1951, a presumption arose that the plaintiff was a moneylender she had satisfied the court that she was in fact carrying on a genuine business as a rubber dealer and a rice dealer. It was in the course of and for the purpose of that business that she advanced money against future deliveries of rubber and rice and although occasionally she obliged friends and neighbours with loans she was not a moneylender within the meaning of the definition of "moneylender" in the Ordinance and she had accordingly rebutted the presumption that arose under section 3.

Cases referred to:—

(1) *Esmail Sahib* v. *Noordin* [1956] M.L.J. 98.

(2) *Litchfield* v. *Dreyfus* [1906] 1 K.B. 584, 589

(3) *Edgelow* v. *MacElwee* [1918] 1 K.B. 205, 207.

(4) *Tong Peng Hong* v. *Public Prosecutor* [1955] M.L.J. 232, 233.

COURT OF APPEAL.

N. Sharma for the appellant (defendant).

H. L. Wrigglesworth for the respondent (plaintiff).